

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ADMINISTRATIVE RULE ADOPTED ON OR AFTER OCTOBER 1, 2009, EXPIRES 7 YEARS AFTER THE EFFECTIVE DATE OF THE RULE; PROVIDING FOR CONTINUATION OF THE RULE WHEN APPROVED BY A LEGISLATIVE RULE REVIEW COMMITTEE; AND AMENDING SECTIONS 2-4-303, 2-4-306, 2-4-307, 2-4-315, 2-4-402, 2-4-406, 2-4-412, AND 5-5-215, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-303, MCA, is amended to read:

"2-4-303. Emergency or temporary rules. (1) (a) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, unless the rule expires sooner pursuant to [section 8], after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review upon petition by any person. The matter must be set for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

(b) An emergency rule may not be used to implement an administrative budget reduction.

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption unless the rule expires sooner pursuant to [section 8]. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective."

Section 2. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and adoption and effective dates -- dissemination of emergency rules.

(1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the agency.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

- (a) if a later date is required by statute or specified in the rule, the later date is the effective date;
- (b) subject to applicable constitutional or statutory provisions:
 - (i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the proposed rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns.

(5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority.

(6) Rules effective as provided in this section expire as provided in [section 8]."

Section 3. Section 2-4-307, MCA, is amended to read:

"2-4-307. Omissions from ARM or register. (1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient.

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by reference and a statement of the general subject matter of the omitted rule and must state where a copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

(3) A rule originally adopting by reference any model code or rule provided for in subsection (1) may not

1 adopt any later amendments or editions of the material adopted. Except as provided in subsection (5), each later
2 amendment or edition may be adopted by reference only by following the rulemaking procedure required by this
3 chapter.

4 (4) If requested by a three-fourths vote of the appropriate administrative rule review committee, an
5 agency shall immediately publish the full or partial text of any pertinent material adopted by reference under this
6 section. The committee may not require the publication of copyrighted material. Publication of the text of a rule
7 previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before
8 publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed
9 rulemaking.

10 (5) Whenever later amendments of federal regulations must be adopted to comply with federal law or
11 to qualify for federal funding, only a notice of incorporation by reference of the later amendments must be filed
12 in the register. This notice must contain the information required by subsection (2) and must state the effective
13 date of the incorporation. The effective date may be no sooner than 30 days after the date upon which the notice
14 is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for
15 federal funding, in which event the effective date may be no sooner than the date of publication. A hearing is not
16 required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be
17 directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not
18 less than 25 members who will be directly affected. Further notice of adoption or preparation of a replacement
19 page for the ARM is not required.

20 (6) If a hearing is requested under subsection (5), the petition for hearing must contain a request for an
21 amendment and may contain suggested language, reasons for an amendment, and any other information
22 pertinent to the subject of the rule.

23 (7) The adoption pursuant to this section of material omitted from a rule does not affect the termination
24 of the rule as provided in [section 8]."

25
26 **Section 4.** Section 2-4-315, MCA, is amended to read:

27 **"2-4-315. Petition for adoption, amendment, or repeal of rules.** An interested person or, when the
28 legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency
29 requesting the promulgation, amendment, or repeal of a rule. Each agency shall determine and prescribe by rule
30 the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after

1 submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking
2 proceedings in accordance with 2-4-302 through 2-4-305. A decision to deny a petition or to initiate rulemaking
3 proceedings must be in writing and based on record evidence. The written decision must include the reasons for
4 the decision. Record evidence must include any evidence submitted by the petitioner on behalf of the petition and
5 by the agency and interested persons in response to the petition. An agency may, but is not required to, conduct
6 a hearing or oral presentation on the petition in order to develop a record and record evidence and to allow the
7 petitioner and interested persons to present their views. A rule adopted pursuant to this section expires as
8 provided in [section 8]."

9
10 **Section 5.** Section 2-4-402, MCA, is amended to read:

11 **"2-4-402. Powers of committees -- duty to review rules.** (1) The administrative ~~rules~~ rule review
12 committees shall review all proposed rules filed with the secretary of state, including rules scheduled to expire
13 pursuant to [section 8], and approve those rules that the committee determines should remain in effect as
14 provided in that section.

15 (2) The appropriate administrative rule review committee may:

16 (a) request and obtain an agency's rulemaking records for the purpose of reviewing compliance with
17 2-4-305;

18 (b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit
19 those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking
20 hearing;

21 (c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through
22 2-4-305;

23 (d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and
24 federal courts and administrative agencies;

25 (e) review the incidence and conduct of administrative proceedings under this chapter."
26

27 **Section 6.** Section 2-4-406, MCA, is amended to read:

28 **"2-4-406. Committee objection to violation of authority for rule -- effect.** (1) If the appropriate
29 administrative rule review committee objects to all or some portion of a proposed or adopted rule because the
30 committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303,

1 and 2-4-305, the committee shall send a written objection to the agency that promulgated the rule. The objection
2 must contain a concise statement of the committee's reasons for its action.

3 (2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule
4 shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify
5 its objection.

6 (3) If the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send
7 the objection to the secretary of state, who shall, upon receipt of the objection, publish the objection in the register
8 adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response
9 must also be published if requested by the agency. Costs of publication of the objection and the agency response
10 must be paid by the committee.

11 (4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency
12 bears the burden, in any action challenging the legality of the rule or portion of a rule objected to by the
13 committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with
14 2-4-302, 2-4-303, and 2-4-305. If a rule is invalidated by court judgment because the agency failed to meet its
15 burden of proof imposed by this subsection and the court finds that the rule was adopted in arbitrary and
16 capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable
17 attorney fees against the agency.

18 (5) An objection or failure to object by a legislative rule review committee pursuant to this section does
19 not affect the expiration of a rule pursuant to [section 8]."
20

21 **Section 7.** Section 2-4-412, MCA, is amended to read:

22 **"2-4-412. Legislative review of rules -- effect of failure to object.** (1) The legislature may, by bill,
23 repeal any rule in the ARM. If a rule is repealed, the legislature shall in the bill state its objections to the repealed
24 rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in
25 accordance with the objections stated by the legislature in the bill. If the legislature does not repeal a rule filed
26 with it before the adjournment of that regular session, the rule remains valid.

27 (2) The legislature may also by joint resolution request or advise or by bill direct the adoption,
28 amendment, or repeal of any rule. If a change in a rule or the adoption of an additional rule is advised, requested,
29 or directed to be made, the legislature shall in the joint resolution or bill state the nature of the change or the
30 additional rule to be made and its reasons for the change or addition. The agency shall, in the manner provided

1 in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction in a
2 bill.

3 (3) Rules and changes in rules made by agencies under subsection (2) must conform and be pursuant
4 to statutory authority.

5 (4) Failure of the legislature or the appropriate administrative rule review committee to object in any
6 manner to the adoption, amendment, or repeal of a rule is inadmissible in the courts of this state to prove the
7 validity of any rule.

8 (5) Failure of an administrative rule review committee to object to a rule pursuant to this section does
9 not affect the expiration of a rule pursuant to [section 8]."

10
11 NEW SECTION. **Section 8. Sunset of administrative rules.** A rule adopted by an agency on or after
12 October 1, 2009, expires 7 years after the effective date of the rule unless, before that date, the rule is reviewed
13 and approved by an administrative rule review committee pursuant to this section. A rule approved by an
14 administrative rule review committee pursuant to this section expires 7 years after review and approval of the rule
15 by an administrative rule review committee unless the rule is again reviewed and approved by an administrative
16 rule review committee pursuant to this section. In order to approve a rule pursuant to this section, the committee
17 shall adopt a motion entered into the minutes of the committee. The legislative council may adopt rules governing
18 the orderly submission of rules for approval pursuant to this section.

19
20 **Section 9.** Section 5-5-215, MCA, is amended to read:

21 **"5-5-215. Duties of interim committees.** (1) Each interim committee shall:

22 (a) review administrative rules within its jurisdiction, including those rules that will expire pursuant to
23 [section 8], and approve those rules that the committee determines should remain in effect as provided in that
24 section;

25 (b) subject to 5-5-217(3), conduct interim studies as assigned;

26 (c) monitor the operation of assigned executive branch agencies with specific attention to the following:

27 (i) identification of issues likely to require future legislative attention;

28 (ii) opportunities to improve existing law through the analysis of problems experienced with the application
29 of the law by an agency; and

30 (iii) experiences of the state's citizens with the operation of an agency that may be amenable to

1 improvement through legislative action;

2 (d) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules;

3 and

4 (e) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to
5 existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion
6 of its work.

7 (2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state
8 may require for presentation to the next regular session of the legislature.

9 (3) The legislative services division shall keep accurate records of the activities and proceedings of each
10 interim committee."

11
12 NEW SECTION. **Section 10. Codification instruction.** [Section 8] is intended to be codified as an
13 integral part of Title 2, chapter 4, part 4, and the provisions of Title 2, chapter 4, part 4, apply to [section 8].

14 - END -